

John French, and Ann his Wife,
Executrix of Henry Chichester, Esq; deceased,
who was Executor of Dorothy Chichester his
late Wife, who was the Executrix of John Chi-
chester her former Husband, who was the Heir
and Executor of Sir John Chichester, deceased,
are the

Appel.

Arthur Chichester, and Ed-
ward Dodridge, Gent. Executors of
Francis Chichester, Esq; deceased,
who was Brother and Heir of the
said John Chichester.

Resp.

The Appellant's CASE.

25th of June, 1665. Sir
 John Chichester's Deed
 of Trust.
 30th April, 1676. John
 Chichester's Deed of
 Trust.
 12th May, 1684. John
 Chichester's Will.

Heard before the Master
 of the Rolls 27th Feb.
 Anno 3^o Jacobi 2di.

Ordered an Appeal to the
 Lords Commissioners,
 18th Feb. 1690.

Re-heard before the Lord
 Keeper Somers, 22d.
 July 5^o W. and M.

Francis Chichester exhib-
 ited his Bill in Term.

The Respondents Bill of
 Revival in Michalmas
 Term 99.

Heard before Lord Keeper
 Wright, 1 Feb. 2di
 Anna Regina.

Masters Report 19th Dec.
 1704.

Ordered 10th Jan. 1705.
 Masters Report 23d of
 Feb. 1705.

THAT Sir John Chichester in June 1665, created a Term of 100 Years to Nicholas Dennis and others, of Lands in Devon, for raising 1000 l. Portion for his Daughter Susanna, and made John Chichester, Son and Heir, his Executor. John Chichester conveyed all his Lands in Devon and Cornwall, to Sir George Chudleigh, and others, in Trust for Payment of the said John Chichester's Debts and Legacies.

That John Chichester intending Susanna should be paid only out of the said Trust Estate in Chudleigh, and others, by his Will gave all his Personal Estate to Dorothy his Wife, and made her his Executrix, by reason she had

joyned with him in the Sale of part of her Inheritance to pay John's Debts. That Dorothy intermarrying with Henry Chichester, Susanna exhibited her Bill in Chancery against them, and the said Francis Chichester and Nicholas Dennis, and the Cause coming to be heard before the Master of the Rolls, he Decreed, An Account of the Personal Estate of Sir John come to the Hands of John his Son Unconverted by him at his Death, as also of Sir John's Trust Estate come to the Hands of John or the then Defendants: And what on that Account should appear in the respective Hands of the then Defendants, the Chichesters, they to pay the same to Susanna; and what the same should fall short to make Good, was to be charged on the Trust Estate created by John, and a Sale was thereby Decreed of the said Trust Estate. But the Court did not think fit in any sort to charge the Personal Estate of the said John, devised to the said Dorothy by her Husband John with any the Plaintiff's Demands, being fully satisfied, that the Lands granted by John to Chudleigh, and others, was intended to be a Trust for satisfying Susanna's Demands, and that John's Personal Estate should be exempt thereof.

That afterwards the Cause coming to be Re-heard on an Appeal by Francis Chichester to the Lords Commissioners, they Decree, The Trust and Personal Estate to be liable to pay the Legacy, but the Decree was to be without Prejudice, as to any Relief the said Henry and Dorothy could Demand upon, or in reference to the Trust created by John.

And the said Henry and Dorothy bring the said Cause to be re-heard before the late Lord Keeper Somers, his Lordship Decreed the Trust Estate of Sir John liable to the said Susanna's Portion, with Interest; and Decreed, That Francis Chichester should pay her the same with Costs, or in default thereof, That he should deliver her the Possession of such Part of the Trust Estate charged by Sir John Chichester with Susanna's Debt, as Francis had in Possession, and that Susanna should hold the same till paid.

That Francis Chichester paid Susanna her Portion with Interest and Costs pursuant to the Lord Somers's Decree, and Dorothy being dead, Francis thereupon exhibited his Bill in Chancery against Henry Chichester, to be reimbursed out of the Personal Estate of John Chichester, and Henry Chichester dying, the Appellant Anne, being his Executrix, married the Appellant French, and Francis Chichester dying also shortly after

The Respondents as Executors of Francis Chichester revived the last Suit, and the Appellants by Answer insisted on the said Decree and the several Deeds aforesaid, and denied that any Assets of Sir John Chichester, John Chichester or Dorothy Chichester ever came to their Hands, and that they had paid the full, if not beyond what Assets of Henry ever came to their Hands.

The Cause came afterwards to be heard before the late Lord Keeper Wright, who dismissed the Bill as to the Account of Sir John Chichester's Personal or Trust Estate, but Decreed an Account of the Personal Estate of John Chichester, and other Matters therein mentioned, and that what had been Received by Dorothy and Henry, should be paid the Respondents.

On the 19th of December 1704. the Master made his Report *ex parte* in the General Words of the Charge, that there had come to the Hands of Dorothy, and also the Hands of Henry her Husband, of the Personal Estate of John 1500 l. and that Dorothy enjoyed some part of the Estate of Francis Chichester, not comprized within her Joynture, whereout she received 297 l. 6 s. 10 d. together making 1797 l. 6 s. 10 d.

By an Order of the 10th of January 1705, it was referred to the same Master to ascertain what was paid by Francis Chichester unto Susanna for her Portion, Interests and Costs, and which he certified to be 1575 l.

That the Appellants do humbly apprehend themselves greatly aggrieved by the said late Lord Keeper Wright's Decree, and by the Reports, Orders, and Proceedings grounded hereon, and humbly hope the same shall be reversed and set aside

I. For that by John Chichester's Deed of Trust (by which Deed the Respondent Chichester claims the Estate of John Chichester) it appears that Susanna's Demands ought to be a Charge thereon, and that the Personal Estate ought to be enjoyed by Dorothy, discharged of Susanna's Portion, according to John's said Trust, and the rather because Dorothy had parted with a considerable Estate of her own to pay John's Debts.

II. For that the Appellants are subjected and made liable in their own Persons to reimburse the Respondents what Francis paid to Susanna, altho no Assets of Sir John Chichester, John Chichester, or Dorothy Chichester ever came to the Hands of the Appellants, nor is any Account directed to be taken of what Assets came to the Hands of the Appellants, and what they received of Henry's Personal Estate, they have fully Answered before this Suit revived.

Note. That John Chichester (who had the Estate of Sir John Chichester, conditionally to pay all Sir John's Debts, Legacies, &c.) puts himself in the Place of Sir John, and consequently becomes liable to pay all Sir John's Debts, Legacies, &c. after which, for Payment of the said Debts and Legacies, he the said John creates a larger Trust, and appoints all his Debts, Legacies, and Funeral Expences to be first paid out of his said Trust Estate, before any Person to whom the Estate was thereby limited, was to claim the same, reserving to himself a Power to revoke, alter, or limit the said Trust by Deed or Deeds, sealed and delivered in the Presence of three or more credible Witnesses but makes no such Deed, only by his Will specifies his Legacies, and orders the manner of his Interment, and directs them to be paid out of his Trust Estate, without any Words of revocation or Limitation, and having by the said Deed of Trust made a sufficient Prohibition to pay all his Debts out of his real Estate, gives his Personal Estate to Dorothy his Wife, under whose Executor the Appellants claim.

And the Respondent now Enjoys the Estate of the said John Chichester, by virtue of the same Deed of Trust, which directs his Debts, Legacies and Funeral Expences to be first paid out of his said Trust Estate.

Sam. Dodd.